

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3780/P4dn
CMH:lmk:wnw

February 13, 2008

Tim:

This d-note is just to ensure that the draft does what you intend. Obviously I am happy to draft whatever you intend the bill to do, but I just want to be sure because some of the feedback seems to conflict with my initial impression of your intent. If my initial impression was incorrect, please let me know.

In general, federal law may be better implemented if DOJ or agencies were required to issue (i.e., "shall issue" instead of "may issue") certification cards. The case that was attached to the latest e-mailed instructions provides that "Congress cannot compel officers of one State to implement federal programs," which is true. However, the state legislature can enact the provisions (and compel agencies), which would implement federal law. Otherwise, if DOJ or a law enforcement agency has discretion on whether or not to issue ("may issue"), either may decide not to issue cards at all (for instance, due to budget restraints or ideology) or decide who should receive a card based on criteria that the legislature would prefer not be used. Moreover, federal law requires a retired officer to carry identification when carrying a concealed weapon (see 18 USC 926C (a)) in order for federal law to preempt the Wisconsin general prohibition under s. 941.23. For example, a retired officer carrying a concealed weapon who, but for the refusal of DOJ or the agency to issue a card (which theoretically could be on a whim since the statute grants unlimited discretion once the base federal law minimums are met), the prohibition under s. 941.23 would apply and the person would be committing a Class A misdemeanor. In addition, I do not know if the permission for unlimited permissive issuing based on no criteria will raise a delegation issue. Finally, as I mentioned in the last version of the bill, there is already discretion in s. 175.48 (2) (b) 6. and (3) (b) 6. for the creation of standards.

Also, I still have questions about who to include. The instructions seem to conflict with what I thought was your intent. If this draft does not address a retired officer who retired from a state or local agency that is not in Wisconsin but who now lives in Wisconsin, that officer, if 18 USC 926C (a) and (d) is to preempt s. 941.23, would have to be carrying one of the following:

1. A photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is

carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

2. A photographic identification issued by the agency from which the individual retired from service as a law enforcement officer AND a certification issued by the state in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state to meet the standards established by the state for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

So, if that retired state officer wants to carry and this draft does not address that officer, he or she must return to his or her state of employment at least once a year to requalify or be subject to prosecution under any Wisconsin statutes prohibiting carrying. I agree that 18 USC 926C (d) (1) does make it unnecessary for Wisconsin to address this since the person can return to another state annually, but I was under the impression that you wanted to simplify the process. If the person lives in Wisconsin but was an active duty officer in Alaska, say, an annual renewal could be a burden to the person. Also, as is, the draft distinguishes between retired out-of-state state or local officers (not federal officers) who now reside in Wisconsin and retired federal officers who now reside in Wisconsin (who may not have worked in Wisconsin). The first is not addressed and has no codified means of obtaining a certification card and the second is clearly addressed and may get a certification card from DOJ. You may have reasons for that distinction, but I want to make sure you know it exists.

You also mention that you do not wish to include nonresident retired law enforcement officers. I agree that federal law already preempts the Wisconsin prohibition (per 18 USC 926C (a)), but I think that codifying the exemption makes it clearer to law enforcement officers and prosecutors and does no harm.

I deleted the provisions that allowed a law enforcement agency or DOJ to require a person to consent for the release of information to verify eligibility to carry a firearm. This provision was in case some mental health issues fell under privacy acts and required a person to consent for the information to be released. Currently some certain court orders or findings under ch. 51 or provisions under 18 USC 922 (g) (4) disqualify a person from carrying a firearm but do not necessarily appear in a state background check. This provision aimed to make this information available when determining if the person were ineligible for a certification card. Without it, I am not sure if the department or law enforcement agency could determine if a person were prohibited under federal law from possessing a firearm.

With regard to the fee structure, I am not sure what you mean by "make reference to federal law." I deleted the provisions that were in the /p3 but now I am not sure what,

if any, fee structure there is. So I also took out the appropriation. Please let me know if you would like a change.

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